IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.11563 OF 1994
WITH
SPECIAL CIVIL APPLICATION No.10850 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAYAJI IRON & ENGG CO PVT LTD - Petitioner(s)
Versus
TOWN PLANNING OFFICER & 2 - Respondent(s)

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Appearance :
MR KM PARIKH for Petitioner(s) : 1,
MR LR PUJARI AGP for Respondent(s) : 1, 3,
MR PRANAV G DESAI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/03/2007

ORAL JUDGMENT

1. Mr.K.M. Parikh, learned counsel for the petitioner, Mr.L.R. Pujari, learned Assistant Government Pleader for the

respondent No.1 – State and Mr.Pranav G. Desai, learned counsel for the respondent No.2, in both these petitions.

2. By these petitions under Article 226/227 of the Constitution of India, the petitioner, being partly aggrieved by the order dtd.31/12/1993 passed in group of appeals (petitioner's Appeal Nos..44 and 45 of 1988, by the Board of Appeal at Baroda, is before this Court with a submission that the learned appellate court / Board was unjustified in holding that the improvemental value is to be reduced by 20% only and not by 50% as claimed by the petitioner.

3. Placing reliance upon Sec.78 of Gujarat Town Planning and Urban development Act, 1976 (“the Act” for short), learned counsel for the petitioner submits that from the very language of the section, it would clearly appear that the value of the plot in dispute should be estimated without reference to improvement contemplated in the scheme and if that be so, the value of the naked plot only is to be taken into consideration.

4. Learned counsel for the respondents, on the other hand, submit that a fair reading of sec.78 of the Act, would make it clear that the value of the land / plot is to be taken on the date of the scheme as if the scheme was complete on the date of scheme and on that assumption, the value of the plot is to be ascertained. According to them, the scheme is already completed because of the fiction on the date of the scheme

itself, then incremental value of the plot would include the attending circumstances and the development so made in the scheme.

5. Sec.78 of the Act reads as under :-

> “Sec.78. For the purposes of this Act, the increments shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme the market value of the plot included in the final scheme estimated on the assumption that the scheme has been completed would exceed at the same date the market value of the same plot estimated without reference to improvements contemplated in the scheme.”

6. Opening words of sec.78 are that for the purpose of the Act, the increments shall be deemed to be the amount by which at the date of declaration of intention to make a scheme (emphasise supplied) the market value of the plot included in the final scheme estimated on the assumption that the scheme has been completed (emphasise supplied) would exceed at the same date the market value of the same plot estimated without reference to improvements contemplated in the scheme.

7. Under the law, property's value as it could be, is to be reduced from the developed of the plot as if on the date of the

scheme, the plot was already developed.

8. It would be improper to say that the reference to improvements contemplated in the scheme, are to be read with developed plot. In fact, the words “without reference to improvement contemplated in the scheme”, are to be read with the market value of the plot as it originally stood. Therefore, on the date of declaration of the intention to make the scheme, two things are to be decided by the Town Planning Officer, firstly that what is the original value of the plot without any improvement and what could have been the market value on the date of the intention, if the property was already covered and developed under the scheme. From the higher the lower is to be reduced and that amount so found, would be the incremental value.

9. In the present case, one cannot say that the estimates made by the Board were absolutely unjustified. In case like present, when there are no buyers or sellers, property has not been put in the market for open sell, then some guesswork has to be applied. One may be little wrong in deciding the market value of the developed plot and the undeveloped plot, however, such valuation, in any case, would not affect the jurisdiction of the Town Planning Officer and Board of Appeal. In any case, in a matter, where guesswork is permissible under the law, High Court would not introduce its jurisdiction by saying that it would act as master of the market.

10. Both the petition deserve to and are accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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